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SURVEY OF EXISTING AGREEMENTS AND INSTRUMENTS, AND ITS FOLLOW-UP

Elements for section IV, chapter 8, of Agenda 21: Legal instruments and mechanisms

Draft proposal by the Chairman

I. BASIS FOR ACTION

1. The recognition that the following vital aspects of the universal, multilateral and bilateral treaty-making process should be taken into account:

(a) The further development of international law in the field of sustainable development, giving special attention to the delicate balance between environmental and developmental concerns;

(b) The need to clarify and strengthen the relationship between existing international instruments or agreements in the field of environment and relevant social and economic agreements or instruments, taking into account the special needs of developing countries;

(c) At the global level, the essential importance of the participation in and the contribution of all countries, including the developing countries, to treaty making in the field of international law on sustainable development. Many of the existing international legal instruments and agreements in the field of environment have been developed without adequate participation and

contribution of developing countries, and thus may require review in order to reflect the concerns and interests of developing countries and to ensure a balanced governance of such instruments and agreements;

(d) Developing countries should also be provided with technical assistance in their attempts to enhance their national legislative capabilities in the field of environmental law;

(e) Future projects for the progressive development and codification of international law for sustainable development should take into account the ongoing work of the International Law Commission; and

(f) Any negotiations for the progressive development and codification of international law concerning sustainable development should, in general, be of universal application, taking into account special circumstances in the various regions.

II. OBJECTIVES

2. The overall objective of the review and development of international environmental law should be to evaluate and to promote the efficacy of that law and to promote the integration of environment and development policies through effective international agreements or instruments taking into account both universal principles and the particular and differentiated needs and concerns of all countries.

3. Specific objectives are:

(a) To identify and address difficulties which prevent some States, in particular developing countries, from participating in or duly implementing international agreements or instruments and, where appropriate, to review and revise them with the purposes of integrating environmental and developmental concerns and laying down a sound basis for the implementation of these agreements or instruments;

(b) To set priorities for future law-making on sustainable development at the global, regional or subregional level, with a view to enhancing the efficacy of international law in this field through, in particular, the integration of environmental and developmental concerns;

(c) To promote and support the effective participation of all countries concerned, in particular developing countries, in the negotiation, implementation, review and governance of international agreements or instruments, including appropriate provision of technical and financial assistance and other available mechanisms for this purpose, as well as the use of differential obligations where appropriate;

(d) To promote, through the gradual development of universally or multilaterally negotiated agreements or instruments, international standards

for the protection of the environment that take into account the different situations and capabilities of countries [, thus avoiding the possible use of unilaterally set environmental standards as barriers to trade] [in order to establish a framework for coexistence between environmental measures and international trade rules, and thus aiming at preventing the use of environmental measures for protectionist purposes];

(e) To ensure the effective and appropriate implementation [and compliance], and to facilitate timely review and adjustment of agreements or instruments by the parties concerned taking into account the special needs and concerns of all countries, in particular developing countries;

(f) To improve the effectiveness of institutions, mechanisms and procedures for the administration of agreements and instruments;

(g) To identify and prevent actual or potential conflicts, particularly between environmental and social/economic agreements or instruments, with a view to ensuring that such agreements or instruments are mutually reinforcing. Where conflicts arise they should be appropriately resolved;

(h) To establish and strengthen mechanisms to identify, prevent and settle international disputes in the field of the environment, duly taking into account existing bilateral and multilateral agreements for the settlement of such disputes.

III. ACTIVITIES

4. Activities and means of implementation should be considered in the light of the above basis for action and objectives, without prejudice to the right of every State to put forward suggestions in this regard [in the General Assembly of the United Nations. These suggestions should be reproduced in a separate compilation on sustainable development for further consideration by the General Assembly].

A. Review, assessment and fields of action in international law for sustainable development

5. While ensuring the effective participation of all countries concerned, Parties should at periodic intervals review and assess both the past performance and effectiveness of existing international agreements or instruments as well as the priorities for future law making in the field of environment and development. [This may include an examination of the possibility of elaborating general rights and obligations of States, as appropriate, in the field of the environment, as provided by General Assembly resolution 44/228, para. 50 (b).] In certain cases, attention should be given to the possibility of taking into account varying circumstances through

differential obligations or gradual application. As an option for carrying out this task, earlier UNEP practice may be followed whereby legal experts designated by Governments could meet at suitable intervals, to be decided later, with a broader environmental and developmental perspective.

[6. (a) In view of the importance of full compliance with the relevant rules of international law, all appropriate means should be considered to prevent any deliberate large-scale destruction of the environment, which cannot be justified under international law. The General Assembly and its Sixth Committee as well as the next International Conference of the Red Cross and the Red Crescent, in particular the ICRC expert meetings, are the appropriate forums to deal with different aspects of this subject.

(b) In view of the vital necessity of continuing to promote the highest level of safe and environmentally sound management of nuclear power worldwide, international cooperation should be strengthened by a step-by-step approach to a nuclear safety convention and its implementation. The relevant work already under way at the International Atomic Energy Agency should be welcomed and it is emphasized that there is a necessity to pass a nuclear safety convention in the framework of IAEA.]

7. [The Parties to international agreements [shall] [should be encouraged to] include adequate procedures and mechanisms to promote and verify compliance. They shall ensure that such mechanisms (including, where appropriate, national reports, joint expert reviews and assessments, complaint and/or fact-finding procedures etc.) are established by or under those agreements. To that effect, States should, inter alia:

(a) Establish efficient reporting systems on the implementation of and compliance with international legal instruments, taking into account experience in other fields such as human rights and nuclear activities, providing, where appropriate, for public comments on such reports;

(b) Consider appropriate ways in which relevant international bodies, such as UNEP, might contribute towards the further development of such mechanisms.]

C. Effective participation in international law making

8. In all these activities and others that may be pursued in the future, based on the above basis for action and objectives, the effective participation of all countries, in particular developing countries, should be ensured through appropriate provision of technical assistance and/or financial assistance. Developing countries should be given "headstart" support not only in their national efforts to implement international agreements or instruments, but also to participate effectively in the negotiation of new or revised agreements or instruments and in the actual international operation of such agreements or instruments. Support should include assistance in building up expertise in international law particularly in relation to sustainable development, and in assuring access to the necessary reference information and scientific/technical expertise [on fair and equitable terms].

[D. Dispute settlement

9. In the area of prevention and settlement of conflicts, States should further study and consider methods to broaden and make more effective the range of techniques available at present.]

or

[D. Identification, prevention and resolution of disputes]

9. States should broaden the range of techniques available for dispute prevention and settlement, in particular under international agreements or instruments, including fact-finding procedures and non-discriminatory mutual appropriate access to national judicial and administrative remedies. Optimal use should be made of relevant experience under international agreements in other areas, for example, in the context of the General Agreement on Tariffs and Trade, the International Labour Organisation, and the United Nations Commission on Human Rights. Provision for effective dispute resolution mechanisms should be included in all international environmental agreements.

To that effect, States should, inter alia:

(a) Establish procedures and mechanisms for the prevention of disputes by, in particular:

(i) Utilizing and, if necessary, improving mechanisms and procedures for the exchange of data and information, notification, consultation and fact-finding regarding situations originating on their territory that might lead to disputes with other States concerning the environment;

(ii) Adopting in appropriate cases effective international instruments providing for fact-finding to clarify and establish the factual issues of the situation on request of a State whose territory is likely to be impaired by transboundary environmental effects of activities or omissions on the territory of other States;

(iii) Considering such a fact-finding commission within the framework of the United Nations Environment Programme;

(b) Strengthen their international commitments relating to the settlement of environmental disputes. They should, in particular:

(i) Include in their treaties relating to the environment, clauses providing for the compulsory settlement of disputes arising from the interpretation or application of those treaties;

(ii) Apply in good faith the settlement procedures that they have agreed on through general, regional or bilateral agreements or otherwise, when such disputes shall, at the request of any party thereof, be submitted to a procedure that entails a binding decision [to binding procedures such as arbitration or judicial settlement];

(iii) Recognize the right of any State party to a dispute that could not be settled directly by the Parties to resort to means of settlement involving a third party;

(iv) Consider recognizing the compulsory jurisdiction of the International Court of Justice, either by treaty or by bilateral declaration under Article 36, paragraph 2, of the Statute of the Court for legal disputes considering the environment;

(c) Provide for Mixed Claims Commissions in appropriate cases in the event of disputes concerning the claims of nationals of one State against another State for compensation of losses or damages suffered by those national or their properties owing to transboundary environmental effects of activities or omissions on the territory of that State.]